



*United States Attorney  
Southern District of New York*

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FOR IMMEDIATE RELEASE  
January 13, 2005

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**NINE INDIVIDUALS CHARGED FOR SUBMITTING FALSE AUDIT  
CONFIRMATION LETTERS TO AUDITORS OF AHOLD SUBSIDIARY  
U.S. FOODSERVICE**

DAVID N. KELLEY, the United States Attorney for the Southern District of New York, and PASQUALE D'AMURO, the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation, announced today the filing in Manhattan federal court of charges against nine individuals who signed false audit confirmation letters submitted to independent auditors of U.S. Foodservice, Inc. ("USF"), a wholly-owned subsidiary of the Dutch food conglomerate Royal Ahold, N.V. ("Ahold"). Each of the nine defendants worked for companies (collectively, the "Vendors") that sold food and food-related products to USF. Each of the nine defendants allegedly signed audit confirmation letters that falsely and fraudulently overstated amounts earned by and/or owed to USF from the Vendors pursuant to various "promotional allowances" arrangements.

In July 2004, four former executives of USF were charged for their participation in a scheme to inflate USF's reported results of operations.<sup>1</sup> The alleged scheme involved the artificial inflation of USF and Ahold's earnings through the improper recognition of over \$800 million in fictitious "promotional allowances," i.e., supposed rebates received from USF's vendors. In furtherance of that scheme, as alleged in the Indictment filed in July 2004, between 2000 and 2003 certain USF executives fraudulently recorded approximately \$800 million in "promotional allowances" as having been earned by USF from various vendors when in fact those amounts had not been earned.

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<sup>1</sup> USF's former Chief Financial Officer, MICHAEL J. RESNICK, and USF's former Chief Marketing Officer and Executive Vice President of Purchasing, MARK P. KAISER, are awaiting trial on charges of (a) conspiracy to commit securities fraud, to make false statements in filings with the United States Securities and Exchange Commission ("SEC"), and to falsify USF's and Ahold's books and records; (b) securities fraud; and (c) making false filings with the SEC.

In July 2004, two other former USF executives pled guilty to charges stemming from their participation in this scheme to inflate earnings. USF's former Executive Vice President of Purchasing, TIMOTHY J. LEE, pled guilty to charges of (a) conspiracy to commit securities fraud, to make false statements in filings with the SEC, and to falsify USF's and Ahold's books and records; (b) securities fraud; and (c) making false statements to a Government official. Former USF Vice President of Purchasing, WILLIAM F. CARTER, pled guilty to charges of conspiracy to commit securities fraud, and securities fraud.

As a result, USF and Ahold's earnings were fraudulently inflated by a total of approximately \$800 million from 2000 through 2003.

As alleged in the July 2004 Indictment and the Informations filed today, USF's former executives obtained audit confirmation letters from individuals who worked for the Vendors that falsely confirmed, among other things, the fictitious amounts of "promotional allowances" booked by USF. The individuals charged today have agreed to plead guilty to separate Informations charging each of them with conspiring with USF's executives to falsify USF's and Ahold's books and records by signing and returning to auditors certain false audit confirmation letters.

In addition, two of the individuals were also charged today with participating in a separate scheme to trade on inside information relating to Ahold's March 2000 tender offer for all of the outstanding shares of the common stock of USF (the "Ahold Tender Offer").

#### **The Scheme to Falsify Books and Records**

According to the Informations, USF was one of the United States' leading wholesale distributors of food and related products to customers such as restaurants and cafeterias. The Informations charge that USF typically purchased the products it resold to its customers from a variety of suppliers at full price. However, the suppliers often refunded to USF a portion of

the purchase prices in the form of negotiated rebates, known as "promotional allowances." Promotional allowances, according to the Informations, reduced USF's cost of sales and thereby increased USF's earnings.

According to the Informations, from time to time between 2000 and 2003, USF's executives caused false entries to be made in USF's books that reflected inflated amounts of PA income earned during a fiscal year from the Vendors and inflated amounts owed to USF by the Vendors at year end. These entries, it is alleged, were often inflated by millions of dollars. The Informations allege that USF executives then caused USF's outside auditors to send confirmation letters containing these inflated numbers to each of the defendants. Such audit confirmation letters are routinely used by outside auditors to obtain confirmation, from third parties, of financial information provided by company management. Audit confirmation letters therefore play an important role in assuring that financial information reported by public companies is truthful and accurate.

Here, the Informations allege, year-end confirmation letters were used by USF's outside auditors to verify the "promotional allowance" numbers reflected on USF's books. According to the Informations and the Indictment filed in July 2000, in order to, among other things, prevent USF's outside

auditors from discovering that they had booked fictitious "promotional allowances," certain USF executives induced each of today's defendants to sign false audit confirmation letters. It is further alleged that each of the defendants knew that the amounts reflected on these confirmation letters were inflated. Nonetheless, each of today's defendants allegedly signed one or more false confirmation letters and returned those letters to USF's outside auditors, thus falsely confirming that the amounts reflected on those letters were correct.

**The Defendants**

| <b>DEFENDANT'S NAME</b> | <b>DEFENDANT'S POSITION AND COMPANY AFFILIATION</b>   |
|-------------------------|---|
| MARK BAILIN             | President, Rymer International Seafood  |
| KENNETH BOWMAN          | Independent contractor for Total Food Sales, Inc. (a broker for Riceland Foods, Inc. and Sanderson Farms, Inc.) |
| TIMOTHY DALY            | Former Vice President of Business Development, Michael Foods, Inc.  |
| MICHAEL HANNIGAN        | Former Regional Sales Manager, Sugar Foods Corporation  |
| PETER MARION            | Owner and President, Maritime Seafood Processors, Inc.  |
| JOHN NETTLE             | Former Account Manager, General Mills, Inc.   |
| GORDON REDGATE          | Owner and President, Commodity Management Inc. and Private Label Distribution, Inc.                             |

|                |   |
|----------------|---|
| BRUCE ROBINSON | Former Divisional Sales Manager, Basic American Foods, Inc. |
| MICHAEL ROGERS | Former Vice President of Sales, Tyson Foods, Inc.           |

### **The Insider Trading And Obstruction Schemes**

In addition to the conspiracy to create false books and records charges, the Informations filed against MARION and BAILIN charge each of them with insider trading in connection with the Ahold Tender Offer. The BAILIN and MARION Informations allege that, prior to the completion of the Ahold Tender Offer, USF was a public company whose stock was traded on the New York Stock Exchange. According to the MARION and BAILIN Informations, acting on tips about the impending Ahold Tender Offer, both defendants purchased USF stock in advance of the public announcement of the Ahold Tender Offer. Both BAILIN and MARION sold their USF stock shortly after the public announcement. As a result, it is alleged that MARION and BAILIN obtained illegal profits of approximately \$363,894.05, and \$1,144,793.75, respectively.

In addition, MARION and BAILIN are each charged with engaging in efforts to obstruct federal investigations of the insider trading scheme.<sup>2</sup> The Information against MARION charges

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<sup>2</sup> The MARION Information supersedes an Indictment unsealed on July 27, 2004, charging him with insider trading, tender offer fraud, obstruction of justice, and making false

him with making false statements to an SEC investigator about MARION's decisions to purchase USF stock. The Information against BAILIN charges him with perjury for falsely testifying under oath in an SEC proceeding concerning the Ahold Tender Offer.

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All defendants voluntarily surrendered this morning.

BAILIN, 49, resides in Lisle, Illinois.

BOWMAN, 58, resides in Dallas, Texas.

DALY, 44, resides in Spring, Texas.

HANNIGAN, 46, resides in Newtown Square, Pennsylvania.

MARION, 57, resides in East Greenwich, Rhode Island.

NETTLE, 45, resides in Bentonville, Arkansas.

REDGATE, 45, resides in Chatham, New Jersey.

ROBINSON, 53, resides in Marietta, Georgia.

ROGERS, 37, resides in Lakeland, Florida.

Mr. KELLEY, a member of the President's Corporate Fraud Task Force, praised the efforts of the FBI and thanked the SEC for its assistance in the investigation. Mr. Kelley stated: "Today's charges should send a strong reminder to companies and executives across the country that it is not only a crime to falsify your own books, it is also a crime to help other

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statements.

companies falsify their's. Executives who succumb to pressure from customers or suppliers to engage in fraudulent transactions or sign false documents designed to fraudulently boost that customer or supplier's financial results will be vigorously prosecuted. Today, all across America, auditors and public companies are beginning the audit process for year-end 2004. And, just as happened at USF, audit confirmation letters are being sent to customers, suppliers and other third parties. Both auditors and the investors who depend on audited financial statements are entitled to full and truthful response from third parties. Those who do not respond fully and truthfully, or who willfully turn a blind eye to protect a profitable business relationship, will face the risk of criminal prosecution and conviction."

Also today, the SEC separately announced the filing of civil charges against BAILIN, BOWMAN, DALY, HANNIGAN, NETTLE, REDGATE, ROBINSON, and ROGERS. The SEC previously filed charges against MARION.

Assistant United States Attorney JAMES G. CAVOLI and Special Assistant United States Attorney ALEX LIPMAN are in charge of the prosecution.

The charges contained in the Informations are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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**POTENTIAL PENALTIES**

BOWMAN, DALY, HANNIGAN, NETTLE, REDGATE, ROBINSON, and ROGERS each face a maximum term of imprisonment of 5 years and a maximum fine of \$250,000.

BAILIN faces the following maximum penalties with respect to each count charged in the BAILIN Information:

| COUNT(S)  | MAXIMUM TERM OF IMPRISONMENT | MAXIMUM FINE   |
|---|------------------------------|--|
| <u>One and Two</u> : Fraud In Connection With A Tender Offer              | 10 years (each count)        | \$1 million or twice the gross gain or loss resulting from the crime |
| <u>Three</u> : Perjury  | 5 years                      | \$250,000  |
| <u>Four</u> : Conspiracy to Falsify Books, Records, and Accounts of Ahold | 5 years                      | \$250,000  |

At sentencing, MARION faces the following maximum penalties with respect to each count charged in the MARION Information:

| COUNT  | MAXIMUM TERM OF IMPRISONMENT | MAXIMUM FINE   |
|--|------------------------------|--|
| <u>One through Six</u> : Fraud In Connection With A Tender Offer (Insider Trading) | 10 years (each count)        | \$1 million or twice the gross gain or loss resulting from the crime |
| <u>Seven</u> : Fraud In Connection With A Tender Offer (Tipping)                   | 10 years (each count)        | \$1 million or twice the gross gain or loss resulting from the crime |

|   |         |           |
|---|---------|-----------|
| <u>Eight</u> : False Statements to a Government Official                  | 5 years | \$250,000 |
| <u>Nine</u> : Conspiracy to Falsify Books, Records, and Accounts of Ahold | 5 years | \$250,000 |